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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 152/2017 & CM No.4901/2017 (for stay)

SANJU BHARTI & ANR

..... Petitioners

Through: Mr. A.K. Pandey & Mr. Vikas Kumar
Sharma, Advs.

Versus

SANJA WATI & ORS

..... Respondents

Through: Mr. Subhash Garg, Adv. for R-1.
Mr. Janender Mahajan, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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13.07.2017

1. This petition under Article 227 of the Constitution of India impugns the orders dated 16th May, 2016 and 5th November, 2016 of the Court of CCJ-cum-ARC-1 (Central), Tis Hazari Court, Delhi in Execution No.83/2014.
2. The petition was entertained and notice thereof issued and vide *ex parte* ad interim order dated 7th February, 2017 execution of the decree stayed.
3. The counsel for the respondent no.1 and the counsel for the respondent no.2 Nirmala Devi appear.
4. None appears for the respondent no.3 Sushma who is stated to be the mother of the two petitioners viz. Sanju Bharti and Meenu Bharti.
5. Vide impugned order dated 16th May, 2016, the objections of the petitioners as well as respondent no.3 under Order XXI Rules 58 and 64 read with Section 151 of the CPC to the execution of a decree dated 31st January, 2005 for partition of immovable property by sale were dismissed.

6. The petitioners filed an application under Section 151 of the CPC for recall of the order dated 16th May, 2016 and vide impugned order dated 5th November, 2016 the said application was dismissed.
7. The application aforesaid under Section 151 CPC which has been dismissed vide impugned order dated 5th November, 2016 is found to be in the nature of review.
8. Per order XLVII Rule 7 of the CPC, no appeal lies against the order of dismissal / rejection of a review application. No petition under Article 227 of the Constitution of India also would be maintainable thereagainst inasmuch as the challenge has to be made to the order of which review was sought.
9. The order of which review / recall was sought was an order of dismissal of objections to an execution and which has been conferred the status of a decree and against which the remedy of appeal is maintainable. It has thus been enquired from the counsel for the petitioners as to how this petition under Article 227 is maintainable.
10. The counsel for the petitioners states that the petitioners had in fact preferred an appeal being RCA No.62009/2016 against the orders dated 16th May, 2016 and 5th November, 2016 which are impugned before this Court but the said appeal was withdrawn on 26th December, 2016 with liberty to avail appropriate remedy and whereafter this petition has been filed.
11. The counsel for the petitioners though does not dispute that against the order dated 16th May, 2016, appeal would lie, states that since the order dated 16th May, 2016 has merged with the order dated 5th November, 2016 against which no appeal lies, this petition was preferred. It is also argued

that the application under Section 151 CPC which was dismissed vide order dated 5th November, 2016 was for recall of the order dated 16th May, 2016 and not for review of the order dated 16th May, 2016 inasmuch as new grounds were urged therein.

12. I am unable to agree.

13. Even in a review application new grounds which ought to have been taken and remained to be taken for reasons described in Order XLVII Rule 1 of the CPC dealing with review, can be taken.

14. Moreover, the order of dismissal of an application for recall of the earlier order cannot be challenged without challenging the order which was sought to be recalled and against which order the remedy of appeal is provided for and which appeal though preferred was under a misconception withdrawn.

15. However the said conduct of the petitioners / their advocate cannot entitle the petitioners to avail of a wrong remedy contrary to the procedure prescribed in law, more so when the petitioners / their advocate have themselves to blame for the state in which they are.

16. The petition is thus dismissed as not maintainable with liberty to the petitioners to, in accordance with law and if entitled to, take appropriate remedy against the orders which were impugned in this petition.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 13, 2017

‘gsr’..